

September 22, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of
the Personal Restraint of

MATTHEW LEE GUSTAMANTE,

Petitioner.

No. 54319-2-II

UNPUBLISHED OPINION

MAXA, J.— Matthew Gustamante seeks relief from personal restraint resulting from his 2013 plea of guilty to second degree child molestation. He argues that the trial court imposed a sentence that exceeded the statutory maximum. The State concedes that the trial court erred, and we accept the concession and grant Gustamante’s petition.¹

The statutory maximum for second degree child molestation is 10 years. RCW 9A.44.086(1); RCW 9A.20.021(1)(b)². The trial court imposed 102 months of confinement and 36 months of community custody for Gustamante’s conviction. However, the combined terms of confinement and community custody – here 138 months – cannot exceed the statutory maximum. RCW 9.94A.505(5) (“[A] court may not impose a sentence providing for a term of confinement or community custody that exceeds the

¹ Because Gustamante’s judgment and sentence is facially invalid, his petition is not time-barred by RCW 10.73.090(1). *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 532-33, 55 P.3d 615 (2002).

² RCW 9A.20.021 has been amended since the events of this case transpired. Because these amendments are not material to this case, we do not include the word “former” before RCW 9A.20.021.

statutory maximum for the crime.”); *see State v. Thibodeaux*, 6 Wn. App. 2d 223, 226, 430 P.3d 700 (2018), *review denied*, 192 Wn.2d 1029 (2019).

RCW 9.94A.701(9) provides that “[t]he term of community custody specified by this section shall be reduced by the court whenever an offender’s standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.” Therefore, Gustamante is entitled to have his term of community custody reduced to 18 months.

We grant Gustamante’s petition and remand to the trial court to amend Gustamante’s judgment and sentence to reduce the term of community custody to 18 months.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



MAXA, J.

We concur:



WORSWICK, P.J.



CRUSER, J.